IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 227 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI KALUBHAI SOLANKI ASSTT LAW OFFICER

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 227 of 1992

MR HARESH J TRIVEDI for Petitioner No. 1

MR KC SHAH, APP for Respondent No. 1

MR HG PATIL for Respondent No. 2-10

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/11/2002

ORAL JUDGEMENT

This Criminal Revision Application has been filed by the petitioner-original complainant being aggrieved by

the order dated 24-3-1992 passed below application Ex.9 in Criminal Case No.348 of 1991 by the learned Judicial Magistrate (First Class), Danta, Palanpur whereby the learned Magistate had ordered for discharge of accused Nos.2 to 9 and matter was ordered to be proceeded with only against accused No.1.

2. The short facts are that a complaint was filed by the present petitioner-original complainant in the Court of learned Judicial Magistrate (First Class), Danta and on receiving the same, it has been numbered as Criminal Case No.348 of 1991 wherein process has been issued by the learned Magistrate against the accused Nos.2 to 9 and same has been duly served and they appeared through advocate. For the purpose of framing charge, complainant has been examined as a witness. At the time of framing charge, an application Ex.9 was submitted by the accused. Said application has been decided by the Court below after giving opportunity of hearing to the parties vide order dated 24-3-1992 whereby accused Nos.2 to 9 were discharged against which, this revision application has been preferred by the original complainant.

3. Heard Mr.Haresh J. Trivedi, learned counsel for the petitioner and learned APP, Mr.K.C.Shah, for the respondent No.1-State. Learned counsel for the respondent Nos.2 to 10, Mr.H.G.Patel, though called out has not remained present.

4. Mr.Trivedi, learned counsel for the petitioner has mainly argued that when there are prima-facie evidence on record namely, specific averments made in the complaint by the complainant more particularly towards para 4, oral evidence which has been recorded by the court and other documentary evidence connecting the accused with the crime in question, court below ought to have framed charge against the accused Nos.2 to 9 instead of discharging them.

4.1 In this connection, he has relied upon the case of Dwarka Cement Works Ltd. & Ors. Vs. State of Gujarat & another, 1992(1) G.L.H. page 9. It has been held by this Court at head note (A) as under:

> "(A) Code of Criminal Procedure, 1973--S.204--Air (Prevention and Control of Pollution) Act, 1981--S.40--S.40 of the Pollution Act providing that in case of offences by company every person directly in charge of and "for the conduct of its business" shall be liable to be proceeded against--Complaint stating that the

accused are "responsible for the management of the Company" but not mentioning as to in what manner each of the accused were directly in charge of and responsible to the management of the Company--held, such minute details of evidence are not necessary while filing the complaint for putting the criminal law in motion--At the initial stage of issuing process, the court has mainly to find out whether the facts disclosed in the complaint contain the ingredient to put the criminal law into motion or not."

4.2 He has also relied upon the case of Azim Hashan Premji & Ors. Vs. State of Gujarat & Ors. 2000(3) G.L.R. page 2280 wherein it has been held by the Court at head note as under:

"Code of Criminal Procedure, 1973 (II of 1974)--Sec.482--Water (Prevention and Control of Pollution) Act, 1974 (VI of 1974)--Secs.25, 26 & 47--Liability of Directors of the Company for offences under the Act--If such Directors are persons "in charge of and responsible to the Company for the conduct of business of the Company" presumption of guilt would arise in their case--In case of other directors liability arises only when consent, connivance or negligence is proved--Complaint relating to not putting in operation treatment plant for trade affluents--Complaint contained averments to the effect that the accused were evading their duty to make the treatment plant operational--Complaint in such a case cannot be quashed."

4.3 He has also relied upon the case of Dahyabhai Kalubhai Solanki Vs. M/s Kashiram Textiles Mills Pvt. Ltd. & Ors, 1994(2) G.L.R. 1166 more particularly towards head note which reads as under:

"Water (Prevention and Control of Pollution) Act, 1974 (VI of 1974)--Sec.21--Mandatory provisions of the sub-sections are to be complied with--If there is substantial compliance with the provisions of sub-secs.(3),(4) and (5) the charge has to be framed."

According to Mr.Trivedi, the present case is fully

covered by the aforesaid judgments and hence, order for discharge of accused Nos.2 to 9 passed by the court below may be quashed and set aside.

5. Looking to the averments made in the complaint more particularly para 4, oral evidence recorded by the Court below and other documentary evidence which are on record and having regard to the facts and circumstances of the case, I am of the opinion that there are prima-facie evidence against the accused Nos.2 to 9 connecting them with the crime in question and hence, in view of the judgment of Dahyabhai (supra) relied upon by the learned counsel for the petitioner, court below ought to have framed charge against the accused Nos.2 to 9 instead of discharging them. However, the case put forward by the accused is required to be taken into consideration at the time of trial.

6. In view of the above, this application is allowed. Order dated 24-3-1992 below application Ex.9 passed by the court below in Criminal Case No.348 of 1991 is hereby quashed and set aside. Court below is directed to proceed with the Criminal Case and dispose of the same expeditiously preferably by trying it on a day-to-day basis. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)

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